

# PENNSYLVANIA SUPREME COURT

Justices	 Christine Donohue	 David N. Wecht	 Kevin M. Dougherty	 Max Baer	 Debra Todd	 Sallie Mundy	 Thomas Saylor
Confidence Score	Strong Democrat	Strong Democrat	Strong Democrat	Mild Democrat	Strong Democrat	Mild Republican	Mild Republican
Opinion Partners						✓	✓
Dissenting Minority							
Determining Majority							
Lone Dissenter						✓	

## SUMMARY

- ▶ Number of justices: **7**
- ▶ Number of cases: **116**
- ▶ Percentage of cases with a unanimous ruling: **43.1% (50)**
- ▶ Justice most often writing the majority opinion: **Justices Saylor and Donohue (20)**
- ▶ Per curiam decisions: **0**
- ▶ Concurring opinions: **62**
- ▶ Justice with most concurring opinions: **Justice Wecht (26)**
- ▶ Dissenting opinions: **46**
- ▶ Justice with most dissenting opinions: **Justice Saylor (13)**

## COURT CONTENTION

The Pennsylvania Supreme Court was one of the most contentious courts in the nation in 2020. At least one justice disagreed with the majority's ruling in 84 cases, which was 72.4 percent of the time the court issued a ruling. At least one justice dissented in 66 cases, which was 56.9 percent of the time.

### Opinion partners

The two justices who allied most often in the majority were Justices Baer and Wecht, who were in the majority together in 85 of the 116 cases heard by the Pennsylvania Supreme Court in 2020, which was 73.3 percent of the time. In our *Ballotpedia Courts: State Partisanship* study, Baer recorded a Mild Democratic Confidence Score and Wecht recorded a Strong Democratic Confidence Score.

The two justices in the majority together second most frequently were justices Todd and Wecht who were in the majority together 70 times, which was 60.3 percent of the time. In our *Ballotpedia Courts: State Partisanship* study, Wecht and Todd both recorded Strong Democratic Confidence Scores.

The two justices who allied with one another most often in dissent were Justices Mundy and Saylor. Mundy and Saylor dissented together 14 times, which was 35.9 percent of all cases with dissents. In our *Ballotpedia Courts: State Partisanship* study, Mundy recorded a Mild Republican Confidence Score and Saylor recorded a Strong Republican Confidence Score.

### Dissenting minority

In 2020, the Pennsylvania Supreme Court decided five cases 4-3. No three justices on the Pennsylvania Supreme Court dissented together with regularity. Justice Saylor dissented in four of the five split decisions, more than any other justice. Justices Mundy and Donohue dissented in three of those cases.

### Determining majority

Of the five cases decided by split decision in 2020, no justice was in the majority in all five of the split decisions. Justices Dougherty and Todd were in the majority four times each, which was more frequently than their colleagues. In each of the split decisions there was a different majority.

### Lone dissenter

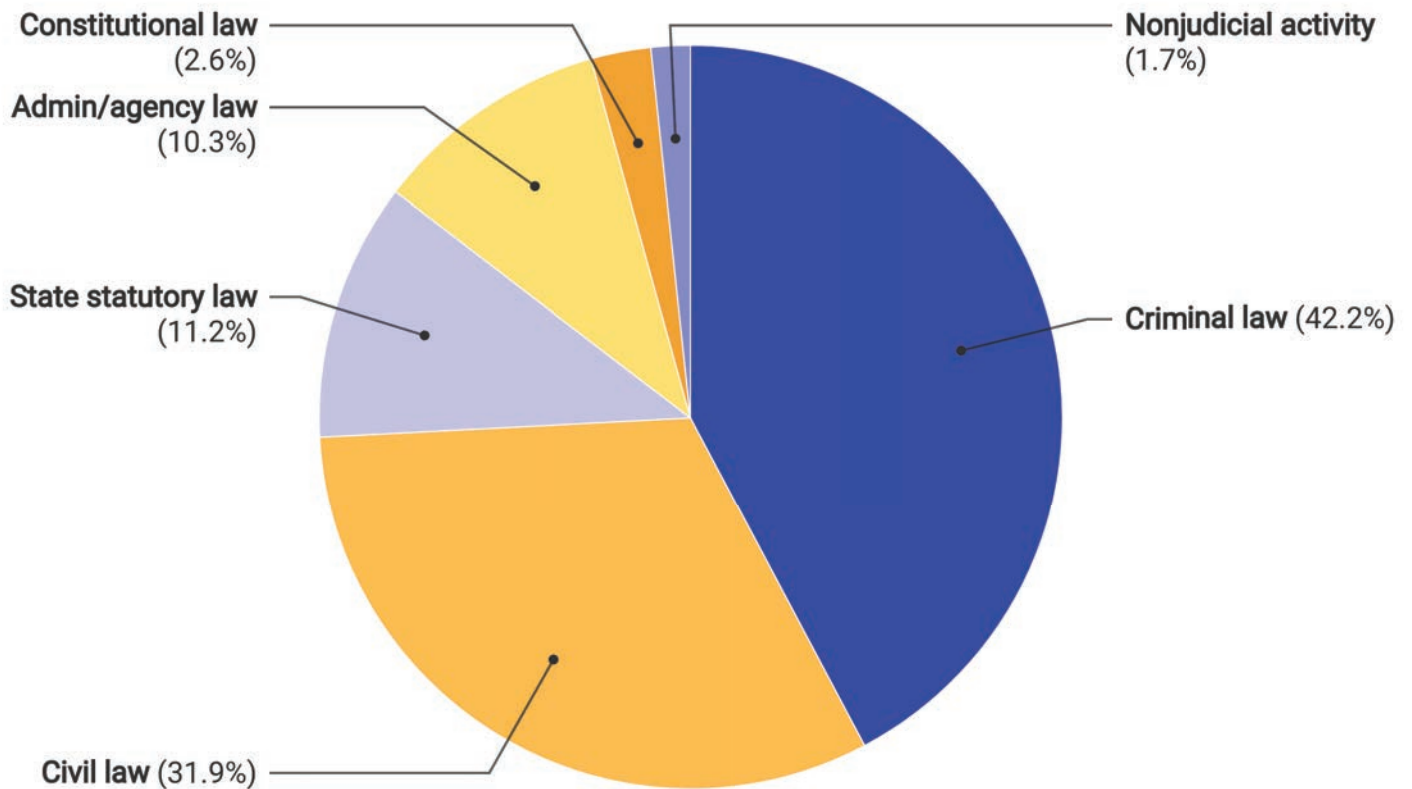
In 2020, Justice Mundy dissented alone five times, which was more than any other justice. There was a lone dissenter in 14 cases. Justice Dougherty was the lone dissenter second most frequently, dissenting alone four times in 2020.

## COURT JURISDICTION

The Pennsylvania Supreme Court has original but not exclusive jurisdiction in cases of habeas corpus, mandamus, and quo warranto. It hears discretionary

appeals from the Pennsylvania Superior Court and the Pennsylvania Commonwealth Court, and it hears certain direct appeals from the Pennsylvania Court of Common Pleas. The court can assume jurisdiction over any case in the Pennsylvania court system.

## Case types decided by Pennsylvania Supreme Court, 2020



**BALLOT**PEDIA

The most common cases heard by the Pennsylvania Supreme Court in 2020 were criminal cases. Of the 116 cases it heard, 49 were criminal cases, which was 42.2 percent of its caseload. A criminal case involves a final criminal appeal before the court of last resort.

The second most common cases that reached the supreme court were civil cases. A civil case is one that involves a dispute between two parties, one of whom seeks reparations or damages. The Pennsylvania Supreme Court heard 37 civil cases in 2020, which was 31.9 percent of its total caseload for the year.

The third most common cases that reached the court were state statutory cases. A state statutory case involves the violation or enforcement of a state statute. The Pennsylvania Supreme Court heard 13 state statutory cases in 2020, which was 11.2 percent of its total caseload for the year.

## PROMINENT CASES

### *Pennsylvania v. Alexander*

Justice	Christine Donohue	David N. Wecht	Kevin M. Dougherty	Max Baer	Debra Todd	Sallie Mundy	Thomas Saylor
Pennsylvania v. Alexander	Writing for the majority	Joining majority opinion	Writing a dissenting opinion	Writing a concurring opinion	Joining majority opinion	Writing a dissenting opinion	Writing a dissenting opinion

- ◆ **Contention:** Justice Donohue wrote the majority opinion. She was joined by Justices Todd and Wecht. Justices Dougherty, Mundy, and Saylor wrote separate dissenting opinions. Justice Wecht wrote a concurring opinion.
- ◆ **Summary:** A police officer and his partner stopped a vehicle driven by Alexander. The officers smelled marijuana, and Alexander admitted that he and his passenger had just smoked a blunt. The officers put Alexander in the police car and searched the vehicle. They found a box that only a key on Alexander's keychain could open. Opening the box, the officers found and charged Alexander with possession of heroin. At trial Alexander was convicted with possession with intent to deliver. The Superior Court affirmed, denying Alexander's claim that the officers (1) lacked probable cause to search the vehicle and (2) needed a warrant to search the lockbox. The question presented to the Pennsylvania Supreme Court was whether the automobile exception to the Fourth Amendment established without limitation in *Commonwealth v. Gary* was consistent with Article I, Section 8 of the Pennsylvania Constitution. The majority ruled that in order to search an automobile without a warrant there must be both probable cause and exigent circumstances.
- ◆ **Majority argument:** Justice Donohue wrote: "As a result of today's decision, we return to the pre-Gary application of our limited automobile exception under Article I, Section 8 of our Constitution, pursuant to which warrantless vehicle searches require both probable cause and exigent circumstances; 'one without the other is insufficient.' Luv, 735 A.2d at 93. 'This dual requirement of probable cause and exigency is an established part of our state constitutional jurisprudence.' Hernandez, 935 A.2d at 1280. As to the renewed application of this principle, we share the confidence expressed by Justice Todd in her dissenting opinion in Gary, specifically that police officers are 'eminently capable as trained professionals of making the basic assessment of whether it is reasonably practicable for them to seek a warrant, under all of the circumstances existing at the time they wish to search an automobile.' Gary, 91 A.3d at 159 (Todd, J., dissenting)." (*Pennsylvania v. Alexander (Majority)*, No. 30 EAP 2019, 52 (Pa. 2020))
- ◆ **Dougherty's dissenting argument:** Justice Dougherty wrote: "'What we can decide, we can undecide.' Kimble v. Marvel Entm't,

LLC, 576 U.S. 446, 465 (2015). This much is clear. But whether we should undo a given precedent is a different matter entirely, and ‘stare decisis teaches that we should exercise that authority sparingly.’ *Id.* In that spirit, ‘we have recognized that changing course demands a special justification — over and above the belief that [a] precedent was wrongly decided[.]’ *Commonwealth v. Reid*, 235 A.3d 1124, 1168 (Pa. 2020). Because I believe the majority does not identify a special justification for overruling *Commonwealth v. Gary*, 91 A.3d 102 (Pa. 2014) (plurality), wherein a majority of this Court adopted the federal automobile exception to the warrant requirement, I respectfully dissent.” (*Pennsylvania v. Alexander (Dissenting Opinion)*, No. 30 EAP 2019, 1 (Pa. 2020))

- ◆ **Mundy’s dissenting argument:** Justice Mundy wrote: “I respectfully dissent from the majority’s opinion, as I would decline to overrule this Court’s decision in *Commonwealth v. Gary*, 91 A.3d 102 (Pa. 2014). In my opinion, the majority declines to honor the tenets of stare decisis, instead opting to impart its desired outcome in the face of a clear rule of law. Further, I do not endorse the Edmunds analysis adopted by the majority, as I would continue to follow the analysis offered by the lead opinion in *Gary*.” (*Pennsylvania v. Alexander (Dissenting Opinion)*, No. 30 EAP 2019, 1 (Pa. 2020))
- ◆ **Saylor’s dissenting argument:** Justice Saylor wrote: “I respectfully dissent, since I wouldn’t overrule the holding of *Commonwealth v. Gary*, 625 Pa. 183, 91 A.3d 102 (2014) (plurality opinion), which was supported by a majority of Justices including myself. See *id.* at 243, 91 A.3d at 1138-39 (Saylor, J., concurring).” (*Pennsylvania v. Alexander (Dissenting Opinion)*, No. 30 EAP 2019, 1 (Pa. 2020))
- ◆ **Baer’s concurring argument:** Justice Baer wrote: “I join the majority opinion in full. Consistent with my dissenting posture in *Commonwealth v. Gary*, 91 A.3d 102 (Pa. 2014) (Opinion Announcing the Judgment of the Court), I agree with the majority that this Court’s adoption of the federal automobile exception to the warrant requirement is inconsistent with Article I, Section 8 of the Pennsylvania Constitution, which, under the circumstances presented, affords greater protection to our citizens than its federal counterpart. I write separately only to reconcile my support of the majority’s rejection of *Gary* with my fervent belief in the adherence to stare decisis.” (*Pennsylvania v. Alexander (Concurring Opinion)*, No. 30 EAP 2019, 1 (Pa. 2020))

*Nicole B. v. Philadelphia Sch. Dist., et al.*

Justice	Christine Donohue	David N. Wecht	Kevin M. Dougherty	Max Baer	Debra Todd	Sallie Mundy	Thomas Saylor
Nicole B. v. Philadelphia Sch. Dist., et al.	Joined dissenting opinion	Wrote dissenting opinion	Joining majority opinion	Joining majority opinion	Joining majority opinion	Joining majority opinion	Joined dissenting opinion

- ◆ **Contention:** Justice Todd wrote the majority opinion. She was joined by Justices Baer, Dougherty, and Mundy. Justice Wecht wrote a dissenting opinion and was joined by Donohue and Saylor.
- ◆ **Summary:** The appellant's eight-year-old son was bullied and eventually sexually assaulted by three of his male fourth grade classmates in a bathroom at his public elementary school. Appellant's son endured both verbal and physical harassment in the two months leading up to the sexual assault. Both appellant and her son reported the harassment to his teacher and school administrators to no avail. After the sexual assault appellant withdrew her son from the school. Over two years later the appellant filed an administrative complaint with the Human Relations Commission against the Philadelphia School District asserting claims of discrimination on the basis of gender and race. The commission rejected the appellant's complaint as untimely because it was filed after the 180-day limit. Appellant filed suit in the District Court of Common Pleas, reiterating her claims. The school argued that she failed to exhaust her administrative remedies because her complaint was untimely, and thus the court did not have jurisdiction. The supreme court set out to determine whether Pennsylvania's Minority Tolling Statute applied to the untimely complaint filed by appellant. The court found that the equitable tolling provision applied to a minor whose parent failed to file an administrative complaint within the statute of limitations.
- ◆ **Majority argument:** Justice Todd wrote: "we determine that the PHRA's equitable tolling provision is ambiguous, and, after consideration of the occasion and necessity for the PHRA, its goals and objects, and the consequences of including minority tolling as part of equitable tolling, we hold that, under its equitable tolling provision, the PHRA's limitation periods may be tolled during a child's period of minority. Like the Supreme Court of New Jersey in addressing its wrongful death statute in *Lafage*, supra, we do not believe that our legislature intended minority status to bar children who have suffered discrimination from seeking the protections and benefits of the PHRA" (*Nicole B. v. Philadelphia Sch. Dist., et al. (Majority)*, No. 16 EAP 2019, 22 (Pa. 2020))
- ◆ **Dissenting argument:** Justice Wecht wrote: "Although the failure to timely file a complaint with the PHRC ordinarily would preclude a complainant from subsequently pursuing litigation in the courts of common pleas, *Clay v. Advanced Computer Applications, Inc.*, 559



A.2d 917, 918-20 (Pa. 1989), those time limits are ‘subject to waiver, estoppel and equitable tolling,’ 43 P.S. § 962(e). Today’s Majority concludes that the PHRA’s equitable tolling provision subsumes the age of minority, such that a person alleging discrimination as a child need not file a complaint within the law’s 180-day time limits. Because I do not share the Majority’s view that traditional equitable tolling principles inherently encompass tolling during the period of minority, I respectfully dissent.” (*Nicole B. v. Philadelphia Sch. Dist., et al. (Dissenting Opinion)*, No. 16 EAP 2019, 1-2 (Pa. 2020))

*PA Dem Party. v. Boockvar, et al : Boockvar*

Justice	Christine Donohue	David N. Wecht	Kevin M. Dougherty	Max Baer	Debra Todd	Sallie Mundy	Thomas Saylor
PA Dem Party. v. Boockvar, et al : Boockvar (majority)	Writing an opinion concurring in part and dissenting in part	Writing a concurring opinion	Agreeing with majority opinion	Writing the majority opinion	Agreeing with majority opinion	Joining Saylor's opinion concurring in part dissenting in part	Writing an opinion concurring in part and dissenting in part

- ◆ **Contention:** Justice Baer wrote the majority opinion. He was joined by Justices Todd and Dougherty. Justice Wecht wrote a concurring opinion. Justice Saylor wrote an opinion **concurring in part and dissenting in part** and was joined by Justice Mundy. Justice Donohue wrote an opinion **concurring in part and dissenting in part** and partially joined Saylor’s opinion.
- ◆ **Summary:** The General Assembly of Pennsylvania enacted Act 77 which created the opportunity for all qualified electors to vote by mail without requiring voters to demonstrate their absence from the voting district on election day. The PA Democratic Party and some Democratic elected officials filed suit in the Commonwealth Court, asking for review and relief relating to five issues of statutory interpretation of Act 77 and the PA Election Code.<sup>5</sup> They asked the Commonwealth Court for injunctive relief “so as to protect the franchise of absentee and main-in voters.” The Pennsylvania Supreme Court exercised jurisdiction to clarify those five counts prior to the 2020 election. The court found that the postal service likely could not return the mail-in ballots within the time period

<sup>5</sup> The Five issues are as follows:

1. declaratory relief to confirm Act 77 permitted local election boards “to provide secure, easily accessible locations . . . where appropriate, mobile or temporary collection sites, and/or drop-boxes for the collection of mail-in ballots”
2. an injunction to “lift the deadline in the Election Code across the state to allow any ballot postmarked by 8:00 p.m. on Election Night to be counted if it is received by the Boards” by 5:00 p.m. on Tuesday, November 10 or to allow boards’ discretion to extend deadlines to 21 days after the voter’s ballot is mailed by the county
3. a requirement that the Board expeditiously notify electors whose mail-in or absentee ballots were incorrectly completed and offer an opportunity to fix minor facial defects until the November 10, 2020 deadline
4. a declaration under Act 77 that the Boards must place ballots submitted without the secrecy envelope—known as “naked ballots”—into a proper envelope and count them instead of invalidating them
5. a declaration that the “Election Code’s poll watcher residency requirement does not violate the United States Constitution’s First and Fourteenth Amendments, its Equal Protection Clause, or the Equal Protection and Free and Equal Elections Clauses of the Pennsylvania Constitution.” See [Harvard Law Review Blog: Pennsylvania Democratic Party v. Boockvar](#).

specified in state election code. The court concluded that it could act to prevent the disenfranchisement of voters and enforce the Free and Equal Elections Clause in the Pennsylvania Constitution. Thus, it approved the injunction allowing a three-day extension of the absentee and mail-in ballot received-by deadline so that ballots sent via the United States Postal Service, postmarked by 8:00 p.m. on Election Day, and received by the county boards of election on or before 5:00 p.m. on November 6, 2020 would be counted.

- ◆ **Majority argument:** Justice Baer wrote: “Based on our disposition of all of the claims set forth above, we grant relief on the claims set forth in Counts I, II, and V of the Democratic Party’s petition for review as follows and hold that: (Count I) the Election Code permits county boards of election to collect hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes as indicated herein, see *supra*. at 20 n. 15; (Count II) a three-day extension of the absentee and mail-in ballot received-by deadline is adopted such that ballots mailed by voters via the United States Postal Service and postmarked by 8:00 p.m. on Election Day, November 3, 2020, shall be counted if they are otherwise valid and received by the county boards of election on or before 5:00 p.m. on November 6, 2020; ballots received within this period that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, will be presumed to have been mailed by Election Day unless a preponderance of the evidence demonstrates that it was mailed after Election Day; (Count V) the poll watcher residency requirement set forth in Section 2687(b) of the Election Code, 25 P.S. § 2687(b), is constitutional. Also, for the reasons set forth herein, we deny the relief sought in Count III and IV of the petition for review.” (*PA Dem Party. v. Boockvar, et al : Boockvar (Majority)*, No. 133 MM 2020, 63 (Pa. 2020))
- ◆ **Concurring argument:** Justice Wecht wrote: “I join the learned Majority’s Opinion in full. ‘No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.’ As the Supreme Court of the United States has explained, the right to vote comprises not just ‘the right of qualified voters within a state to cast their ballots,’ but also the right ‘to have their ballots counted.’ In our Commonwealth, the franchise is guaranteed by the Free and Equal Elections Clause of the Pennsylvania Constitution, which commands: ‘Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.’” (*PA Dem Party. v. Boockvar, et al : Boockvar (Concurring Opinion)*, No. 133 MM 2020, 3-4 (Pa. 2020))
- ◆ **Saylor’s argument concurring in part and dissenting in part:** Justice Saylor Wrote: “although the majority decision appears to be designed to accommodate only ballots actually mailed on Election Day or before, the majority does not so much as require a postmark.



Particularly in combination with the allowance of drop boxes, this substantially increases the likelihood of confusion, as well as the possibility that votes will be cast after 8:00 p.m. on Election Day, thus greatly undermining a pervading objective of the General Assembly.” (*PA Dem Party. v. Boockvar, et al : Boockvar (Concurring and Dissenting Opinion)*, No. 133 MM 2020, 4 (Pa. 2020))

- ◆ **Donohue’s argument concurring in part and dissenting in part:**  
Justice Donohue wrote: “Petitioners base their request for relief on the infringement of the rights afforded by Article 1, Section 5 of the Pennsylvania Constitution, our Free and Equal Elections Clause. In my mind, the issue must be framed as an as-applied challenge, during the duration of the COVID-19 public health crisis and current USPS service standards, to the constitutionality of Sections 3150.12a(a) and 3150.16(c) of Act 77, which respectively set the last date on which voters may request mail-in ballots and the deadline for when ballots must be received by county boards of elections. With deference to my learned colleagues, I believe that this issue should have been decided in a case in this Court’s original jurisdiction under Act 77, Michael Crossey et al, v. Kathy Bookckvar [sic], et al., No. 108 MM 2020, where the claims likewise were based on the Free and Equal Elections clause and in which this Court ordered the creation of a complete evidentiary record to determine whether the petitioners there had met their high burden to prove the existence of a constitutional injury entitling them to relief.” (*PA Dem Party. v. Boockvar, et al : Boockvar (Concurring and Dissenting Opinion)*, No. 133 MM 2020, 3-4 (Pa. 2020))